

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Cingular Wireless, LLC	)	
	)	
Petition for Designation as	)	
Eligible Telecommunications Carrier	)	
in the Commonwealth of Virginia	)	

**REPLY COMMENTS OF TDS**

TDS Telecommunications, Inc. (TDS), a rural incumbent local exchange carrier (RLEC), joins Embarq, the Independent Telephone and Telecommunications Alliance (ITTA), and others in urging the Commission to deny or delay consideration of the Cingular Wireless, LLC (Cingular) petition for designation as an eligible telecommunications carrier (ETC). TDS is not new to these proceedings; it has filed in similar proceedings comments detailing the modus operandi of entities such as Cingular, which apply for support without the capacity or intention of meeting the requirements of universal service.<sup>1</sup> Even against this backdrop, the Cingular petition is remarkable in its lack of available detail, its lack of seriousness in showing how it qualifies, and its lack of demonstrating a commitment to universal service and the public interest.

As the comments in this proceeding powerfully argue, the Commission should not grant Cingular's petition because Cingular, like many wireless applicants before it, cannot discharge its

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<sup>1</sup> See *NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida*, Comments of TDS Telecom, CC Docket No. 96-45 (Feb. 2, 2004) (TDS Telecom's *Nextel Comments*).

burden to satisfy the criteria for ETC designation specified by the Communications Act, Commission regulations, and the 2005 *ETC Designation Order*. Cingular cannot credibly promise that it will offer supported services using its own facilities in a substantial part of its service area. Cingular cannot establish that its designation will improve the quality and choices of high-cost customers – to use the statutory language – *throughout* the service area. For these reasons and others, Cingular also cannot show that its designation as an ETC is in the public interest.

The Commission should at a minimum delay resolution of Cingular’s petition until the universal service reform proceeding is complete. There is a real risk that the ETC designation process is boxing in the Universal Service Fund and limiting the Commission’s prerogatives. This uncoordinated approach to universal service funding should end. Each additional designation creates unnecessary and pressure on the sustainability of the Universal Service Fund. The Commission should not further hinder its ability to achieve universal service reform by simultaneously entertaining petitions such as that of Cingular. Policy decisions made in isolation do not serve the process, the Fund, or the public interest. Rather than regulating in piecemeal, the Commission should delay consideration of ETC designation petitions until it adopts a comprehensive reform plan.

#### **I. CINGULAR FAILS TO SATISFY THE CRITERIA FOR ETC DESIGNATION**

Federal law establishes a set of minimum criteria a provider must meet in order to be designated as an ETC.<sup>2</sup> These obligations apply “throughout [the] service area” for which the carrier seeks designation.<sup>3</sup> As articulated by the Commission in its *ETC Designation Order*, an ETC applicant must demonstrate:

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<sup>2</sup> See 47 U.S.C. § 214(e); 47 C.F.R. § 54.201(d).

<sup>3</sup> See *id.*

1. a commitment and ability to provide services to all customers within its proposed service area;
2. that it will remain functional in emergency situations;
3. that it offers local usage comparable to that offered by the ILEC; and
4. that it understands its potential obligation to provide equal coverage.<sup>4</sup>

In addition, the Commission will not designate an entity as an ETC if it is not in the public interest, which in turn is a function of whether the designation would further the goals of universal service.<sup>5</sup> The burden falls squarely upon the petitioner to show each of these elements.<sup>6</sup> In seeking designation, Cingular relies on a build out plan that is under a non-disclosure agreement and is therefore not available to any interested party. Nevertheless, the record available indicates that Cingular cannot meet the minimum criteria for an ETC and should therefore not be so designated.

**A. Cingular has failed to evidence a credible commitment to providing supported services, or to improve services in high-cost markets.**

As the comments filed by Embarq demonstrate,<sup>7</sup> Cingular is in no position to make good on its promise to provide supported services to every customer in the proposed service territory upon request. At present, Cingular's coverage is entirely concentrated in low-cost, densely-populated

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<sup>4</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report & Order, 20 FCC Rcd 6371, para. 20. (2005) (*ETC Designation Order*).

<sup>5</sup> *Id.* at para. 40; see also *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, 19 FCC Rcd 1563, para. 27 (2004) (*Verizon Cellular ETC Designation Order*); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation Eligible Telecommunications Carrier for the Commonwealth of Virginia, Memorandum Opinion and Order*, Docket No. 96-45, 19 FCC Rcd 6438, para. 21. (2004) (*Highland Cellular ETC Designation Order*).

<sup>6</sup> *ETC Designation Order* at para. 44 ("In determining whether an ETC has satisfied these criteria, the Commission places the burden of proof upon the ETC applicant.").

<sup>7</sup> Comments of Embarq at 13-17.

areas of Virginia and along interstate highways. Cingular has credibly promised to do little more than what is best for Cingular, *i.e.*, to reinvest support to improve its competitive position in low-cost areas where customers already have advanced services and choice. In areas that it prefers not to do business (*i.e.*, high-cost areas), Cingular will not invest but will resell the services of another carrier to meet its obligations.

Section 214(e) of the Act provides that an ETC may use a combination of its own facilities and resale to meet its service obligations. Yet it is unclear what the point of designating a particular carrier as an ETC would be if the carrier can discharge its obligations in a significant percentage of its service area entirely through existing providers, rather than by investing in new facilities. At a minimum, a successful ETC petition should describe what proportion of its obligations it intends to discharge through resale. Cingular—surprisingly, given the substantial amount of money it will take from the Fund—provides no such account. All Cingular offers is language that merely parrots the text of the Act.<sup>8</sup> In doing so, Cingular claims that it “*primarily* will use its own infrastructure, which includes the same antennae, cell-sites, towers, trunking, mobile switching and interconnection facilities used to serve its existing customers.” What does that mean? Fifty-one percent of the service area will be served using Cingular’s facilities? Sixty percent? Ninety percent? Because Cingular at present covers so little of Virginia, it is difficult to imagine how it will cover the requested service areas without “primarily” relying on resale. It also is difficult to imagine how the Commission can discharge its obligation to find that a designation is in the public interest without first obtaining answers to these questions.<sup>9</sup>

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<sup>8</sup> Cingular Petition at 8 (“Cingular certifies that it will provide the supported services using its own facilities or a combination of its own facilities and the resale of another carrier’s service.”).

<sup>9</sup> Cingular similarly gives the Commission almost nothing in the area of equal access commitment. An applicant must “acknowledge that [the Commission] may require them to provide equal access to (continued...) ”

**B. Cingular's designation would not serve the public interest.**

Section 214 requires the Commission to determine that an ETC designation will serve the public interest. "The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service."<sup>10</sup> The goal of universal service—a nationwide ubiquitous infrastructure capable of delivering quality services, including "advanced telecommunications and information services" to persons in rural and other high-costs areas and at prices reasonably comparable to those in low cost areas—are well-known. As Chairman Kevin Martin has repeatedly noted,<sup>11</sup> competition is not necessarily the lodestar of universal service.

Cingular is but another wireless carrier to apply for universal service support, without any assurance that this support will a) lead to better quality or more advanced service for rural and other high-cost customers; and b) advance the goal of universal service in a reasonable manner. It is clear that Cingular's business plan is to take this money to reinvest it in an effort to improve Cingular's competitive position *in the low-cost markets it already serves*. TDS and other commenters have demonstrated this practice of taking funds to serve high-cost areas, and then not spending any resources to serve those high-cost areas.<sup>12</sup>

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long distance carriers in the designated service areas in the event that no other ETC is providing access within the service area." *ETC Designation Order* at para. 35. In merely mentioning equal access in passing, *see* Cingular Petition at 13, Cingular converts the ETC designation process into a simple formality of reciting statutory requirements. The public interest deserves more.

<sup>10</sup> *ETC Designation Order* at para. 40.

<sup>11</sup> *See, e.g., Federal-State Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an ETC*, Memorandum & Order, CC Docket No. 96-45 (Apr. 12, 2004) (Dissenting Statement of Commissioner Kevin J. Martin); *Federal-State Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (Dissenting Statement of Commissioner Kevin J. Martin).

<sup>12</sup> *See, e.g., TDS Telecom's Nextel Comments*.

The Commission can no longer ignore this pattern and should undertake a rigorous examination of whether already-designated ETCs have lived up to their promises.<sup>13</sup>

## **II. DESIGNATING CINGULAR AS AN ETC HAS REPERCUSSION FOR UNIVERSAL SERVICE REFORM GENERALLY**

Cingular's petition for ETC designation has at least two serious repercussions for universal service as whole. *First*, as several commenters noted, Cingular's petition foretells an avalanche of similar petitions that, if successful, will impose tremendous strain on the Universal Service Fund and force it to grow to an unsustainable size. As the Commission has acknowledged, ETCs already account for a large portion of Fund growth.<sup>14</sup> As more (and larger) wireless carriers successfully apply for ETC status, the Fund rushes toward unsustainability, threatening to violate Section 254's mandate that universal service be predictable, sufficient, and sustainable.<sup>15</sup> As Verizon and Embarq have indicated, it is the intended beneficiary of the universal service—the high-cost consumer herself—who ultimately suffers by excessive subsidy.<sup>16</sup>

*Second*, ETC designations interfere with reasoned decision making. As Chairman Martin has noted, individual petitions such as that of Cingular “may prejudice the on-going work of the Federal-

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<sup>13</sup> For instance, TDS questioned in 2004 whether Nextel “would bring unique or significant benefits to subscribers in the Rural ILECs’ service areas.” *Id.* Has it?

<sup>14</sup> See *Virginia Cellular ETC Designation Order* at 31 (noting Commission’s concern “about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs”).

<sup>15</sup> See Comments of National Telecommunications Cooperative Association (NTCA) at 9 (indicating that Cingular’s petition could “entic[e] all national wireless providers to seek federal USF support at the FCC and at state commission in all 50 states . . . lead[ing] to the collapse of universal service funding mechanisms.”); Comments of Verizon at 5 (“[F]unding Cingular would continue the trend of subsidizing more and more CETCs with universal service funds in an increasing number of service areas.”).

<sup>16</sup> Comments of Verizon at 6; Comments of Embarq at 18. See also *Alenco Communications v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (describing the effect of excessive subsidy on rates).

State Joint Board regarding the framework for high-cost universal service support.”<sup>17</sup> Universal service is a complex and important regime, and attempting to reform it order by order is inefficient and ill-advised. By reviewing ETC petitions one-by-one, the Commission is forced to make important policy decisions in isolation. Moreover, because meaningful decisions are being made in two parallel and interactive proceedings, each interested party must engage on multiple fronts. For these reasons, the Commission should not act on Cingular’s petition until it completes the universal service reform proceeding. In that way, the Commission and all interested parties may focus their attention on an integrated and comprehensive policy.

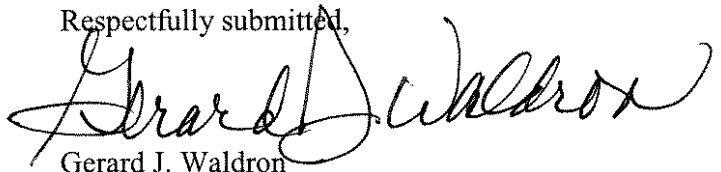
### **III. CONCLUSION**

Cingular has failed to show that it meets the minimum criteria for designation, and that it will invest support in a way that furthers the goals of universal service. Cingular has failed to show that designation is in the public interest. The public interest is best served by directing universal service funds to uses that will lead to the deployment of advanced, high quality services to rural and other high cost customers. Finally, the Commission hinders its important work to reform universal service by forcing itself and interested parties to split their attention between two proceedings, and by analyzing the policy repercussion of reform in piecemeal. In conclusion, TDS joins the many commenters who urge the Commission to deny or delay consideration of Cingular’s petition for designation as an ETC.

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<sup>17</sup> *Virginia Cellular ETC Designation Order* (Dissenting Statement of Commissioner Kevin J. Martin).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerard J. Waldron". The signature is fluid and cursive, with the first name "Gerard" being more prominent and the last name "Waldron" following in a similar style.

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